

**TITLE 175. STATE BOARD OF COSMETOLOGY AND BARBERING**  
**CHAPTER 10. LICENSURE OF COSMETOLOGISTS, BARBERS, SCHOOLS AND**  
**RELATED ESTABLISHMENTS**

***Rule Impact Statement***

**I. A brief description of the proposed rule:**

The proposed rule changes, if approved, will transform emergency rules into permanent rules, regarding individuals who have pleaded guilty, nolo contendere, or have been convicted of a crime, or who have a criminal charge currently pending that is substantially related to the practice of occupations regulated by the Cosmetology and Barbering Act and poses a reasonable threat to public safety, health or welfare. *See* OAC 175:10-1-3. The changes are needed to make the rule language consistent with statutory changes to 59 O.S., § 4000.1, that became effective on November 1, 2022. The proposed rule changes do add a ninety-five-dollar (\$95) fee for applicants to obtain an initial determination; however, the fee is specifically authorized by law (59 O.S., § 4000.1(J)), and the Oklahoma State Board of Cosmetology and Barbering (“Board”) will waive the fee once for low-income individuals.

The proposed rule changes also: 1) allow schools to use electronic versions of the rule book (OAC 175:10-3-30); 2) clarify rule language concerning what kinds of cosmetology and barbering services a health care facility may provide patrons and residents without having to obtain an Establishment license (OAC 175:10-5-4); 3) distinguish between services provided in a licensee’s residence and those provided in a patron’s residence, consistent with newly-enacted 59 O.S., § 199.18 (OAC 175:10-7-1); 4) define with particularity what kinds of services “puncture the skin,” and therefore are outside the scope of practice of Cosmetologists and Facialists/Estheticians (OAC 175:10-7-29); and 5) revoke OAC 175:10-9-54, consistent with the newly-enacted exemption from licensing for services that are incidental to theatrical, radio, television or motion picture productions, modeling or photography, in 59 O.S., § 199.6(E)(5).

Finally, several of the amended rules and the new rule establish a new limited specialty license for Eyelash Extension Specialists, consistent with the Board’s authority in 59 O.S., § 199.3(B)(5). *See* OAC 175:10-3-16; 175:10-3-47; 175:10-7-33; 175:10-7-33.1; 175:10-9-55; 175:10-11-2; and 175:10-13-1. Eyelash Extension Specialists will be required to undergo only three hundred and twenty (320) hours of training, as opposed to the one thousand five hundred (1,500) currently required of Cosmetologists or the six hundred (600) currently required of Estheticians/Facialists; currently, per OAC 175:10-9-55, only licensed Cosmetologists or Facialists/Estheticians may perform eyelash extensions. The amended rules and new rule establish curriculum and examination requirements; sanitation, disinfection and safety requirements; set a licensure fee; establish who can teach Eyelash Extension Specialist courses or classes; and allow the Board to grant reciprocity for licensed specialists from other states. This less restrictive licensing program is needed to help settle litigation that was recently instituted against the State of Oklahoma, in *Davis v. State Board of Cosmetology and Barbering*, CV-2022-1729 (Okla. Cty. Dist. Ct. Sept. 7, 2022).

**II. A description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the costs of the proposed rule, and any information on cost impacts received by the agency from any private or public entities:**

The persons most likely to be affected by the proposed rule changes include: 1) potential applicants for licensure who have a criminal history or criminal charges pending (there will be a \$95 fee to obtain an initial determination, which may be waived for low-income individuals); 2) current licensees; 3) individuals who are interested in obtaining a limited specialty license as an Eyelash Extension Specialist (the Board will establish a \$25 annual licensure fee); and 4) the general public.

**III. A description of the classes of persons who will benefit from the proposed rule:**

Oklahomans who want to become licensed or certified by the Board and who have a criminal history or have criminal charge(s) currently pending, may request an initial determination rendered by the Executive Director and the Chair of the Board, in consultation with legal counsel. If unsatisfied with the response, they may request that the matter be set for hearing before the Board, consistent with the Board's rules of practice and the Oklahoma Administrative Procedures Act ("OAPA").

Oklahomans who only want to perform eyelash extensions will be able to obtain licensure at substantially less expense by completing a targeted training program – three hundred and twenty (320) hours, as compared against one thousand five hundred (1,500) hours of training (for Cosmetologists) or six hundred (600) hours of training (for Estheticians/Facialists). However, because the new training and sanitation, disinfection and safety requirements will be specific to performing eyelash extensions, the public interest will still be protected.

The public interest will be further protected by ensuring that Cosmetologists and Estheticians/Facialists do not perform services that are outside of their scope of practice, either because the services puncture the skin or because they are within the scope of the healing arts, as prohibited by Oklahoma statute. This specific rule change resulted from a recent increase in complaints from consumers and medical practitioners regarding potentially unsafe "med spa" services being performed by Board licensees.

**IV. A description of the probable economic impact of the proposed rule upon affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change:**

Individuals who want to obtain an Eyelash Extension Specialist license will have to pay a thirty-five-dollar (\$35) examination fee, consistent with the examination fee charged all other license applicants. They will also have to pay a twenty-five-dollar (\$25) annual license fee. Both fees are comparatively small, when evaluated against the fees charged by other states, including regional neighbors. The fees are critically needed to offset licensure, inspection and enforcement costs of the agency.

Individuals who want to obtain an initial determination of potentially disqualifying criminal history will have to pay a fee of ninety-five dollars (\$95); however, the fee is specifically authorized by law (59 O.S., § 4000.1(J)), and the Board will waive the fee once for low-income individuals. The fee is needed to offset the cost of attorney fees, since counsel will help gather, evaluate and make recommendations concerning criminal histories of applicants, on a case-by-case basis.

- V. The probable costs and benefits to the agency and to any other agency of the implementation and enforcement of the proposed rule, the source of revenue to be used for implementation and enforcement of the proposed rule, and any anticipated effect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the agency:**

It is expected that any new revenue will be offset by increased agency costs of licensure, inspection and enforcement.

- VI. A determination of whether implementation of the proposed rule will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule:**

The Board does not anticipate any economic impact on any political subdivisions or that their cooperation in implementing or enforcing the rule changes would be required.

- VII. A determination of whether implementation of the proposed rule may have an adverse economic effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act:**

The Board does not anticipate any adverse effect on small business as a result of the proposed rule changes.

- VIII. An explanation of the measures the agency has taken to minimize compliance costs and a determination of whether there are less costly or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rule:**

The Board finds that there are no less costly or nonregulatory methods or less intrusive methods to achieve the purpose of the proposed rule changes.

- IX. A determination of the effect of the proposed rule on the public health, safety, and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety, and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk:**

Please see answer to III, above. Moreover, as it relates to applicants with criminal histories or charges currently pending, the public health and safety is protected, because the new law allows agencies to consider criminal histories that occurred more than five years ago

when the underlying offense is more serious or violent, as determined by the Oklahoma Legislature.

**X. A determination of any detrimental effect on the public health, safety, and environment if the proposed rule is not implemented:**

The public health, safety or welfare will be detrimentally affected by failure to implement these new and revised rules. Failure to approve the rules could result in more unlicensed or inadequately trained individuals performing cosmetology and barbering services, potentially resulting in significant and lasting harm to consumers' eyes and skin. Moreover, as it relates to applicants with criminal histories or charges currently pending, if the proposed rule changes are not implemented, the individual consideration of any particular criminal history or pending criminal charge will be less rigorous and the Board's final order will not be able to be appealed to District Court, consistent with the OAPA and 59 O.S., § 4000.1.

**Date prepared: December 30, 2022**